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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 45263
)	
v.)	TWIN FALLS COUNTY NO.
)	CR-2010-6298
VALENTIN CALVILLO,)	
)	APPELLANT'S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

After a jury found Valentin Calvillo guilty of seven offenses, the district court sentenced him to thirty years, with fifteen years fixed.¹ Mr. Calvillo then filed an Idaho Criminal Rule 35(a) motion to correct an illegal sentence. The district court denied his motion. Mr. Calvillo appeals.

¹ In a separate case, No. 44520, Mr. Calvillo appealed from the district court's judgment of conviction. As of this brief's filing, the case is pending before the Idaho Court of Appeals.

Statement of Facts and Course of Proceedings

A jury found Mr. Calvillo guilty of one count of sexual abuse of a child, in violation of I.C. § 18-1506, and six counts of lewd and lascivious conduct with a minor, in violation of I.C. § 18-1508. (Aug. R.,² pp.209–11.) The district court sentenced him to an aggregate term of thirty years, with fifteen years fixed. (Aug. R., pp.266, 261–64.) The district court entered the judgment of conviction on August 24, 2016. (Aug. R., pp.261–64.) On June 16, 2017, Mr. Calvillo filed a pro se Rule 35(a) motion. (R., p.29.) He argued: “Pursuant to Idaho Code Statute 19-2522, the Court failed in its obligation to order a psychological evaluation to determine competency and mental stability. The conviction of charges alleged warrants reason to believe a mental issue exists and a significant factor for sentencing was erroneously [sic] not given.” (R., p.29.) The district court denied the motion. (R., pp.31–33.) The district court reasoned:

The defendant asserts his sentence is illegal because the court failed to order a psychological evaluation, which the defendant claims the court is obligated to do. The Defendant’s argument does not actually contest the legality of his sentences. Rather, he challenges the court’s decision not to order a psychological evaluation. Thus, the defendant’s argument is a collateral attack on a decision by the court, and therefore beyond the scope of a Rule 35 motion. . . . Moreover, the defendant’s sentences are legal on the face of the record. Reaching the merits of the defendant’s argument would require the court to look beyond the face of the record. The court will not do so in response to a Rule 35 motion to correct an illegal sentence. The defendant’s sentences are well within the statutory limits for his crimes and are not otherwise contrary to applicable law.

(R., pp.32–33.) Mr. Calvillo timely appealed from the district court’s order denying his Rule 35 motion. (R., p.35.)

² On August 4, 2017, this Court issued an order augmenting the record in this case with the record from a separate, earlier appeal of this case, No. 44520. Citations to the Augmented Record (“Aug. R.”) refer to the Clerk’s Record in No. 44520 and citations to the Augmented Record, Confidential Exhibits (“Aug. R., Conf. Exs.”) refer to the confidential exhibits in No. 44520.

ISSUE

Did the district court abuse its discretion when it denied Mr. Calvillo's Rule 35(a) motion?

ARGUMENT

The District Court Abused Its Discretion When It Denied Mr. Calvillo's Rule 35(a) Motion

Idaho Criminal Rule 35(a) states: "The court may correct a sentence that is illegal from the face of the record at any time." I.C.R. 35(a). "Rule 35 is a 'narrow rule.'" *State v. Clements*, 148 Idaho 82, 86 (2009) (quoting *State v. Farwell*, 144 Idaho 732, 735 (2007)). "Rule 35 is not a vehicle designed to reexamine the facts underlying the case to determine whether a sentence is illegal." *Id.* [T]he rule only applies to a narrow category of cases in which the sentence imposes a penalty that is simply not authorized by law" *Id.* Pursuant to Rule 35(a),

the term 'illegal sentence' . . . is narrowly interpreted as a sentence that is illegal from the face of the record; *i.e.*, does not involve significant questions of fact or require an evidentiary hearing. The rule is limited to legal questions surrounding the defendant's sentence, and any factual issues must be apparent from the face of the record.

State v. Meier, 159 Idaho 712, 713 (Ct. App. 2016) (citations omitted).

Turning to the relevant statute, "Idaho Code § 19-2522(1) specifies that 'if there is reason to believe the mental condition of the defendant will be a significant factor at sentencing and for good cause shown,' the court must appoint a psychiatrist or psychologist to evaluate and report upon the defendant's mental condition to inform the court's sentencing decision." *State v. Black*, 161 Idaho 867, 870 (Ct. App. 2017) (quoting I.C. §19-2522(1)). "Where the court has reason to know that the defendant has a long history of serious mental illness, the defendant's mental condition will be considered a significant factor for sentencing." *Id.* The district court's decision whether to obtain a psychological evaluation for sentencing is discretionary. *Id.*

A district court's election not to order a psychological evaluation will be upheld on appeal if the record can support a finding that there was no reason to believe a defendant's mental condition would be a significant factor at sentencing or if the information already before the court adequately met the requirements of I.C. § 19-2522(3).³

Id. However, this Court held in *State v. Carter*, 155 Idaho 170 (2013), that there is no constitutional violation based upon the district court's failure to order a psychological evaluation sua sponte. *Id.* at 174–75. As such, the district court's failure to order a psychological evaluation sua sponte is not a reviewable claim on appeal. *Id.*; see also *State v. Clinton*, 155 Idaho 271, 273 (2013).

Mindful of the constraints of Rule 35(a) and I.C. § 19-2522(1), Mr. Calvillo nonetheless maintains that the district court abused its discretion by denying his motion. He asserts “[t]he conviction of charges alleged warrants reason to believe a mental issue exists,” and therefore the district court should have ordered a psychological evaluation. (R., p.29.) He further contends his sentence is illegal because the district court did not consider this “significant factor.” (R., p.29.)

CONCLUSION

Mr. Calvillo respectfully requests that this Court vacate the district court's order denying his Rule 35 motion and remand this case for further proceedings.

DATED this 7th day of November, 2017.

_____/s/
JENNY C. SWINFORD
Deputy State Appellate Public Defender

³ Regarding Mr. Calvillo's mental health, the presentence report stated, “Mr. Calvillo did not report having a history of mental health illnesses. He does not have any concerns in this area of his life and does not believe he needs to undergo a mental health evaluation or to participate in counseling.” (Aug. R., Conf. Exs., p.34 (Presentence Investigation Report).)

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 7th day of November, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

VALENTIN CALVILLO
INMATE #100731
ISCI
PO BOX 14
BOISE ID 83707

JOHN K BUTLER
DISTRICT COURT JUDGE
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

JCS/eas